

ST 01-0163-GIL 08/15/2001 TELECOMMUNICATIONS EXCISE TAX

Generally, persons that provide subscribers access to the Internet and who do not, as part of that service, charge customers for the line or other transmission charges which are used to obtain access to the Internet, are not considered to be telecommunications retailers. See 86 Ill. Adm. Code 495.100(d). (This is a GIL).

August 15, 2001

Dear Xxxxx:

This letter is in response to the letter sent on your behalf by INDIVIDUAL, dated June 29, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

Please refer to our attached letter dated May 4, 2001 requesting a written verification from the Department that the corporation named above is not subject to the telecommunications tax.

Per conversation with PERSON of the Illinois Department of Revenue on June 20, 2001, it was her opinion that COMPANY would not be subject to the telecommunications tax. However, in order to get a written verification of that opinion, we understand it must come from the legal division.

Accordingly, please review the enclosed information and respond directly to COMPANY that the telecommunications tax is not applicable under the facts as presented on Form RT-3.

Thank you for your assistance in this matter.

We do not have enough information to make a determination regarding whether or not the services provided are subject to Telecommunications Excise Tax. However, we hope that the information provided below is helpful.

The Telecommunications Excise Tax Act, 35 ILCS 630/1 et seq., imposes a tax upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. Please see the enclosed copy of 86 Ill. Adm. Code Part 495. This tax must be collected from persons by retailers

maintaining a place of business in Illinois and is then remitted directly to the Department by such retailers. See Section 495.110.

Section 2(c) of the Act defines “telecommunications,” and states that this term does not include “value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission.” Section (2)(a)(3) of the Act states that the term “gross charge,” which forms the basis for the tax, does not include “charges for leased time on equipment or charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content.”

Generally, persons that provide subscribers access to the Internet and who do not, as part of that service, charge customers for the line or other transmission charges which are used to obtain access to the Internet, are not considered to be telecommunications retailers. See 86 Ill. Adm. Code 495.100(d). It is our general understanding that most Internet access providers do not, as part of their billing, charge customers for such line charges, but instead, pay to their telecommunications providers all transmission costs that they incur in providing the service. Generally, the customers pay to their providers all transmission costs that they incur while using the service. The single monthly fee charged by such retailers, which often represents a flat charge for a package of items including Internet access, E-mail, and electronic newsletters would generally not be subject to the Telecommunications Excise Tax.

However, please note that persons providing customers with Internet access, but who also provide customers the use of 1-800 service, and separately assess customers with per minute charges for the use of such 1-800 numbers, are considered to be telecommunications retailers. Such retailers will incur Telecommunications Excise Tax on charges made for such 1-800 services. If, however, such Internet service providers do not separately assess customers with per minute charges, but pay their own providers for all transmission costs for the 1-800 service, they would not be considered to be telecommunications retailers. Generally, Digital Subscriber Line (DSL) service is telecommunications subject to Telecommunications Excise Tax.

If Internet access service providers provide both transmission and data processing services, the charges for each must be disaggregated and separately identified. See 86 Ill. Adm. Code 495.100(c), enclosed. The statute does not require disaggregation on the customers’ invoice, however. Therefore, it is the Department’s position that so long as the non-telecommunications charges are disaggregated from the telecommunications charges in the retailers’ books and records, for audit purposes, such disaggregation need not be shown on the customers’ invoice. If the non-telecommunications charges are not disaggregated from the telecommunications charges, the full amount will be subject to Telecommunications Excise Tax. If none of the charges billed are for telecommunications, then none of the charges would be subject to tax.

Retailers of telecommunications who are reselling telecommunications are required to register with the Department, file returns, and remit Telecommunications Excise Tax directly to the Department. Purchases of line time by telecommunications retailers from local and long distance carriers may be made without incurring tax by providing these suppliers with resale certificates.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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Enc.